Court of Common Pleas of Cuyahoga County, Ohio.

JACOB MYERS, *et al.*, *v.* KNICKERBOCKER LIFE INSURANCE CO.

A General Agency for a Life Insurance Company is like any other agency, revocable at the will of either party, subject to the claim of the other party for such damages as the contract may entitle him to.

Where the contract of appointment does not give the agent an *exclusive* right to represent the company, the latter may appoint other agents, but the appointment of another agent in the same place, whose operations materially lessen the advantages of the contract to the first agent, is a breach of the contract by the company, and the agent may terminate it, or have an action for damages.

The abandonment by the agent of a substantial part of his principal's business, is a good ground of terminating his agency, but if the principal assents to such abandonment, the authority of the agent as to the rest of the business continues.

An insurance agent, by his contract, was to solicit new insurances, and to collect premiums on renewals of former ones. On the new ones, and on the renewals so long as they should be collected by him, and paid to the company without other expense to it, he was to have certain specified commissions. *Held*, that his abandonment of soliciting new insurances would be good ground for the company to terminate his agency for both purposes; but if the company failed to discharge him for such cause, and he continued with its assent to collect the renewal premiums, then his right to commissions thereon continued; and if the company subsequently refused, without other good cause, to allow him to collect renewals, he would be entitled to damages.

This was an action for breach of contract, in depriving plaintiffs of the collection of certain renewal premiums on insurances which they had obtained as agents for defendants, under the following letter of appointment:

Messrs. Jacob & James H. Myers, Galion, O.:

Gentlemen:—The directors of this company are pleased to appoint you their general agents to obtain insurance for them in the State of Ohio. For your services as such general agents, the company will allow you the following commissions: On all first premiums collected by you, seventeen per cent. besides the policy fee; on the renewals of your business, seven per cent., so long as they are collected by you and paid to the company without other and further expense to them. And after the death of Jacob Myers, the renewals to be collected by James H. Myers, and the same commissions to be paid to him so long as they are collected without further charge to the company.

You will please observe, in particular, the instructions addressed to you on the third page opposite.

I am, yours truly,

ERASTUS LYMAN, *President.*

The other facts sufficiently appear in the charge of the court.

E. Sowers and *W. H. Gaylord,* for plaintiffs.

W. C. McFarland and *Geo. Willey,* for defendant.

PRENTISS, J., charged the jury, as follows:

This action, gentlemen, is brought to recover for the value of what are called renewals of certain insurances effected by the plaintiffs, in the company of the defendant, or rather the plaintiffs' commissions on such renewals. The plaintiffs' claim is predicated upon a contract made between them and the defendant, by which the plaintiffs were appointed general agents of the defendant "to obtain" insurance for the defendant "*in the State of Ohio.*"

The plaintiffs state in their petition, the contract, by the terms of which they were to receive as compensation for their services, as such general agents of the defendant, on all first premiums collected by them, seventeen per cent., and on all renewal premiums seven per cent., so long as they were collected by the plaintiffs, or paid to defendant without other and further expense to the defendant than plaintiffs' commissions. These commissions were subsequently increased by the defendant to twenty per cent. on the first premiums, and to ten per cent. on the renewal premiums. They further state that accompanying the letter of appointment were certain instructions as to the manner in which the duties of the plaintiffs were to be performed, and which constituted a part of the terms and conditions of the contract. They state that they accepted this appointment and entered upon and faithfully discharged the duties of their agency until on or about the first of July, 1867, at which time the defendant, without good cause, refused to allow them to collect, and forbade their collecting the renewals on insurances they had procured for defendant, though they were at all times ready and willing to collect them. They state that in the discharge of their duties they procured three hundred and thirty-eight policies of insurance in the company of the defendant; that the amount insured by these policies was three hundred and seventy thousand dollars, and the annual renewal premiums on these policies were thirty-seven thousand dollars, and claim that by reason of the defendant's

refusal to allow them to collect, and forbidding their collection of the renewal premiums, they have sustained damages to the amount of thirteen thousand dollars, for which, with interest upon that sum from the first of July, 1867, they ask judgment against the defendant.

The defendant, in its answer, admits the appointment of the plaintiffs as general agents of the defendant, and their acceptance of that appointment, and at the close of the answer the defendant denies everything stated in the petition which is not previously admitted in the answer; in substance, the answer denies all other allegations and statements of the petitioners. The answer further states that the agency of the plaintiffs was terminated with the plaintiffs with their consent, given in their letter of September 18th, 1867, for certain reasons which are set forth forth in the answer. And these reasons for the termination of the plaintiffs' agency stated in the answer are:

1st. That the plaintiffs employed, as medical examiners, persons whom they knew had no proper amount of medical knowledge and skill to fit them for the performance of the duties of medical examiners.

2d. That the plaintiffs refused and neglected to make returns of their transactions as general agents of the defendant, as they were required to do by the 8th article of the instructions appended to the letter of appointment.

3d. That the plaintiffs refused and neglected to remit moneys collected by them to the defendant.

4th. That the plaintiffs refused to account for the number and amount of policies and renewal certificates in their hands, and return to the defendant.

5th. That the plaintiffs allowed bills of account against the defendant, not specially authorized by the defendant in writing, and returned and paid such bills out of defendant's money in their hands, and neglected to send defendant vouchers for money expended by them, either with or without the authority of the defendant.

6th. That while the plaintiffs were acting as the defendant's general agents, they wrote the defendant certain insulting and disagreeable letters, and letters threatening to work for other

insurance companies, and took the agency of the Connecticut Mutual Life Insurance Company, and procured insurance for that company, and endeavored to persuade and did persuade persons who were insured in defendant's company to change their insurances into the Connecticut Mutual.

7th. That the plaintiffs' reports to defendant were irregular as to form and time, incomplete, incorrect, and at times entirely unintelligible; that they kept their accounts with the defendant, and with policy-holders, in so incorrect and unintelligible a manner, that they could not be understood or explained.

8th. That the plaintiffs received from the defendant a large number of policies and notes, a list of which is appended to the answer, which they have never accounted for.

9th. That the plaintiff, contrary to instructions, and the ordinary and usual way of doing such business, placed in the hands of applicants for insurance, a great number of policies, without receiving from them the premiums of insurance at the time of the delivery to them of these policies.

These are the grounds of complaint which the defendant claims existed against the plaintiffs at the time when the removal of the plaintiffs from their agency was made—that removal, however, being made with the consent of the plaintiffs themselves. They further, in their answer, state certain counter-claims, or claims existing in favor of the defendant, and against the plaintiffs, growing out of the same transactions, or connected with them—out of which grows the claim of the plaintiffs. The first counter-claim is for three thousand dollars, money collected by plaintiffs for defendant, while plaintiffs were acting as general agents for defendant, and which they have not paid over to the defendant. The second counter-claim is for two thousand dollars damages for unfaithfulness of plaintiffs, as previously stated in the answer (being the same unfaithfulness which I have spoken of), and by reason of false representations of the plaintiffs, that the defendant was an unreliable and insolvent company, these false representations being made for the purpose of persuading, and by which persons holding insurances in the company of the defendant *were* persuaded to drop those insurances, and insure in the Connecticut Mutual Life Insu-

rance Company. The third counter-claim is for the amount of five notes, given by the plaintiffs to the defendant, for fifty dollars each, payable as stated in the answer, with interest from the several dates, copies of which, as you will see, are contained in the answer. On all counter-claims the defendant claims to recover the amount of five thousand three hundred dollars with interest from the several dates stated in the answer.

There is an additional counter-claim—a claim made by the defendant, which is a counter-claim, although not styled as such in the answer. This claim is for certain policies of insurance which were by the defendant put into the hands of the plaintiffs, and which had not been accounted for by the plaintiffs to the defendant, and which it asks that the plaintiffs may be compelled to account for in this action.

The reply of the plaintiffs to the answer of the defendant denies the several statements contained in the answer; puts in issue, perhaps, all the statements which are made material except the statements of the counter-claims. It does not deny, entirely, the first counter-claim of three thousand dollars for money alleged to be in the hands of the plaintiffs, belonging to the defendants. It admits a liability on that counter-claim to the extent of about six hundred dollars, and denies any liability on that counter-claim, to an amount beyond that sum. What I have denominated the third counter-claim, that is the claim upon the five promissory notes, is not at all denied by the reply, and whatever is not denied of those counter claims by the reply, is admitted, unless there is substantially a statement in the petition, which is in contradiction of the statements of the counter-claim. The reply does not deny the second counter-claim at all. That counter-claim I have already said to you, is for damages, which the defendant says it has sustained by reason of the want of fidelity of the plaintiffs, in the discharge of their duties as general agents of the defendants, and by reason of certain false representations that were made in respect to the solvency and responsibility of the defendant's company, by which, persons were persuaded to change insurances which they had previously effected in the defendant's company, into the Connecticut Mutual Life Insurance Company. There

is, however, the statement in the petition, which to some extent is a denial of the statements contained in this counter-claim, that the plaintiffs were faithful in the discharge of their duties. So much of the counter-claim, to which I have referred, as avers a want of fidelity in the plaintiffs, is substantially a denial of the statement in the petition, *of fidelity* on the part of the plaintiffs.

The object of this action is not to recover damages for any improper or unauthorized removal of the plaintiffs, by the defendant, from their agency, nor is any such fact alleged in the petition, but its object is to recover the value to the plaintiffs, of their commissions on renewals of policies effected by them, for the defendant, on the ground that the defendant refused to allow them to collect these renewals and receive their commissions upon them.

There is nothing in this contract which required the plaintiffs to continue in this agency any longer than they pleased to continue; or the defendant to continue them in it any longer than it pleased to continue them. The plaintiffs might, therefore, abandon the agency at any time, and at any time the defendant might discharge them from it, subject, however, to any rights or liabilities which might exist in favor of, or against either, at the time of such abandonment or discharge. Nor is there anything in the contract which would prevent the defendant appointing other general agents in the State of Ohio. There is no restriction in it of the defendant's powers in this respect, or any grant of the exclusive right of the plaintiffs to the agency of the *whole state.*

From the character and subject-matter of this contract, and the nature of the relations which it created between the parties to it, it is manifest that entire good faith should be required of the parties in the execution of it.

The defendant had the right to prescribe the terms and conditions of the appointment of its agents, and rules for their government in the discharge of the duties of their agency, and an acceptance of the agency was an acceptance of such terms, conditions and rules, and both parties are bound to their observance in good faith.

Now while the defendant might appoint other general agents in the state, not being restricted by the contract in that respect, yet good faith on the part of the defendant would require that it should not appoint other general agents to occupy ground previously occupied by the plaintiffs, and so materially and injuriously interfere with the interests of the plaintiffs under the contract. But the mere appointment of another general agent to operate in territory previously occupied by the plaintiffs, would not injure the plaintiffs so as to furnish grounds of complaint to them, or be a breach by defendant of its part of the contract, unless and until such agent had so acted under his appointment and within such territory as to deprive the plaintiffs of, or materially or substantially lessen the benefits, advantages and profits of the plaintiffs under their contract.

If the plaintiffs procured insurance in the defendant's company as general agents, as it is conceded they did, by so doing they would become entitled to commissions on the first premiums, and would, *prima facie*, acquire the right to commissions on the premiums on the renewals of those policies, so long as they should be collected by the plaintiffs, or paid to the defendant without other or further expense to the defendant than plaintiffs' commissions. And if the plaintiffs were at all times ready and willing to collect such renewal premiums without such other or further expense to the defendant, and the defendant refused without any good cause to permit them to collect, and withheld from them the necessary means and facilities for collecting such premiums, the plaintiffs would be entitled to recover from the defendant the value of their commissions on such premiums, whatever you may, from the testimony, find to be that value.

To enable the plaintiffs to recover, then, there must have been—

1. Insurance effected by the plaintiffs in the company of the defendant on which there were renewals.

2. Readiness and willingness on the part of the plaintiffs to collect those renewals without further or other expense to the defendant than their commissions for such collection.

3. Refusal by the defendant, without good cause, to allow the plaintiffs to collect these renewal premiums.

That there were insurances effected by the plaintiffs on which there were renewals, seems to be undisputed. Were the plaintiffs at all times willing and ready to collect these renewals without further expense to the defendant than their commissions? The plaintiffs claim that they have proven they were. The defendant claims to have proven that they were not; that so long as the plaintiffs were ready and willing to collect these renewals, it sent them the renewals for that purpose, and they did collect them and received their commissions on them; and this was the case with all the renewals prior to the renewals of September, 1867; and before these renewals were to be collected the plaintiffs abandoned their agency, and by reason of such abandonment of their agency, from that time they were not willing and ready to collect these renewals, and the defendant was not, after that time, bound to furnish them with the renewals for collection.

If the plaintiffs, without good cause, furnished them by the defendant therefor, voluntarily abandoned the entire agency, the agency, so far as the collection of renewals was concerned, as well as the agency so far as the procuring of new insurances was concerned, then the plaintiffs, from the time of such abandonment, were not ready and willing to collect these renewals, and the defendant was not bound to furnish them to the plaintiffs for that purpose, and the plaintiffs cannot recover that which they claim in this action. But the voluntary abandonment by the plaintiffs of the agency so far as related to the procurement of new insurances, would authorize and justify the defendant in removing them from the agency for collecting the renewals. But if the defendant did not—I mean after said voluntary abandonment of a part of the agency (that part which related to the effecting insurance)—did not so remove the plaintiffs for such cause—their abandonment of that part of the agency which related to the procurement of new insurances—and the plaintiffs still continued, with the defendant's assent, to collect the renewals, they being still ready and willing to collect them, such an abandonment of a part of the agency would not be a forfeiture of their right to collect the renewals, and would not, of itself, prevent their recovery in this action.

And it is upon this ground precisely, that the agent may, with the consent of his principal, abandon a part of the duties which pertain to him to perform by virtue of his contract of agency; and may, with the assent of his principal, continue to perform all other duties pertaining to his agency. But if the agent says to the principal, "I will not perform a part of these duties, I will only go on and perform another part of them," that will afford good ground for the principal to discharge the agent from the performance of any duties, as such, for if it would not, the agent might of himself, of his own motion, of his own mere will, change the contract between the parties, into a contract of a different character from that which they intended to make, and did make, but if the principal assents to the agent continuing as agent for the performance of part of the duties, then the principal cannot after such assent, claim the abandonment by the agent, of the performance of a part of the duties, as a defence to any claim which the agent may make, for the performance of so much of the duties, as, with the assent of the principal, he did perform.

Did the defendant without good cause, refuse to allow the plaintiffs to collect these renewals? That is what is averred in the petition, and upon that subject, of course, there is a denial in the answer.

The plaintiffs assert that they faithfully performed the duties of their agency. The defendant says they did not, and in its answer sets out many particulars in which it claims they were unfaithful to the defendant, as their general agents, and which they say furnished good cause to the defendant for terminating the plaintiffs' agency, and withdrawing the renewals from them, and for which it was in fact terminated, and the renewals withdrawn from them, and with the consent of the plaintiffs.

The plaintiffs were bound, undoubtedly, in good faith to execute and discharge the duties of their agency, in substantial conformity with its terms and conditions, and the instructions, which were a part of the contract, except so far as they were changed or waived with the assent of the defendant.

Now whatever may have been the original terms and conditions of this contract, it was entirely competent for the parties

to the contract at any time to change or waive a performance in conformity with its terms and conditions. A failure in this respect, on the part of the plaintiffs, in the performance of their duties in good faith; gross misconduct in them, and gross neglect of duty would be gross misconduct, would be a forfeiture of the plaintiffs' right under the contract, and would justify the defendant in removing the plaintiffs from their agency, and withholding from them the renewals for collection. The plaintiffs were not necessarily bound to devote their whole time and attention to the business of their agency, nor were they bound not to accept the agency of any other business, the discharge of the duties of which would not essentially or materially interfere with the business of the defendant, or conflict with its interests. Good faith, however, required of them while acting as the general agents of the defendant, that they should devote so much of their time and attention as was reasonably necessary to a faithful discharge of their duties. They had no right to neglect its interests to the injury of the defendant, nor had they a right to take the agency of any other business which would necessarily come in conflict with, and the execution of which did in fact, come in conflict with and injuriously affect, the interests of the defendant. The selection as medical examiners of persons known by the plaintiffs as unfit and unsuitable persons for the performance of those duties; the unwarrantable and unjustifiable refusal and neglect to make returns and remittances, and to account for policies and renewal certificates; the endeavoring to persuade and the persuading of persons who had taken policies in the defendant's company to give up those policies and take policies in other companies; the keeping of false books of account, or keeping their accounts purposely in such a manner as to deceive the defendant, or prevent its knowing the true condition of the business in their hands; the knowingly making of false representations as to the solvency or ability of the defendant, or as to any other matters prejudicial to the business or interests of the defendant; the unjustifiable retaining in their hands money of the defendant which they ought to have paid over to it; each and all of these acts, if done by the defendants, and especially if done with the

intent and purpose of injuring the defendant, would be in violation of their duty, and would be such misconduct in the plaintiffs as would justify the defendant, unless the defendant assented to or waived them after the commission of them, to dismiss the plaintiffs from their agency and withdraw from them the collection of the renewals, and would be a forfeiture of the plaintiffs' right to the collection of the renewals and their commissions on such collections.

If the plaintiffs did not, voluntarily, abandon their agency, as I have before stated, in the manner and under the circumstances I have already stated to the jury, and the defendant did not have good cause for its refusal to allow the plaintiffs to collect the renewals, and did refuse to allow them to collect the renewals, the plaintiffs are entitled to recover the value of their commissions on such renewals after such refusal.

But if the plaintiffs did so voluntarily abandon their agency, or the defendant did have good cause for its refusal to allow them to collect these renewals, then the plaintiffs cannot recover.

Now upon the facts of this case, gentlemen, I have nothing to say, as those facts are for your disposition alone. I have stated to you what I suppose to be the rules of law properly applicable to what are claimed to be the facts in the case, by the parties to this action. If the plaintiffs are entitled to recover, they are entitled to the value of their commissions on the renewals of insurance effected by them in defendant's company. It is the value of the plaintiffs' commissions on these renewals which is to be recovered, and you are to get at their value as best you can, upon the testimony in the case. It is, from the nature of the plaintiffs' claim, somewhat difficult to estimate correctly this value. This value depends so much upon contingencies, that to some extent it must be conjectural. The termination of the life of the insured, or his refusal or neglect to continue his insurance, would put an end to the renewals, and when either of these will happen is beyond human knowledge. But insurance companies have some rules by which these events are approximately ascertained, and base the estimates of value upon these rules. But whatever may be the rules upon which

these estimates are based, if you can find from the testimony in this case, what was the actual value of the plaintiffs' commissions upon these renewals, you should return that value, irrespective of any estimates based upon these rules, and you may resort to the estimates based upon these rules where the other testimony fails, or in aid of the entire testimony; giving to such estimates, and all the testimony in the case, such weight and influence as you think it ought reasonably to have.

If you find for the plaintiffs on their claim, you will ascertain the damages by computing the proper interest upon them from the time when their claim should have been paid to the first day of the present term of this court; and then you will proceed to the ascertainment of what is due from the plaintiffs to the defendant upon the claims asserted in its answer; and this, however, you are required to do, whether you find for or against the plaintiffs on their claim.

I have said to you that the first counter-claim of the defendant is for three thousand dollars, money collected by the plaintiffs while acting as the agents of the company, which was not paid over to the defendant. This counter-claim embraces money only. You will ascertain how much money is due on this counter-claim. The plaintiffs admit, as they say, about six hundred dollars due from the plaintiffs to the defendant on this contract. The admission does not bind anybody but the plaintiffs. They have no effect or influence upon this claim of the plaintiffs beyond this: that to the extent to which it is admitted there is money due upon this claim by these plaintiffs to the defendant, to that extent you must return a verdict in favor of the defendant and against the plaintiffs; but the whole claim beyond that is open to the testimony to prove, and you are to find from all the testimony in the case, if you can, how much money there was, at the time of the commencement of this suit, in the hands of these plaintiffs belonging to this defendant. For that amount, whatever it be, the defendant should be allowed a verdict against the plaintiffs, whether the plaintiffs are entitled to a verdict for their claims against the defendant or not.

The third counter-claim, I have said to you, is founded upon five promissory notes, about which there is no controversy. As

this is a just claim in favor of the defendant and against the plaintiffs, you are to compute the interest upon these notes according to the terms of the notes, if they provide when the interest shall commence, and if they do not provide when the interest shall be payable upon them, you are to compute the interest from the day when those notes became due.

The second counter-claim is for damages due to the defendant by reason of the unfaithfulness of the plaintiffs in the discharge of their duties in the agency of the defendant, and by reason of their false representations made for the purpose of, and which did, in fact, induce persons holding insurances in defendant's company to drop those insurances and take new insurances in the Connecticut Mutual.

To allow anything on the first branch of this counter-claim, you must find that the plaintiffs were unfaithful in the discharge of their duties as agents of the defendant, and that some damage resulted, directly and immediately, to the defendant therefrom. The proof should show some specific damage, and that the unfaithfulness of the plaintiffs produced it—that is, you must be able to put your hand or finger upon some feature, in which the defendant has sustained damage by reason of the want of fidelity in the discharge of their duties, and whatever that damage may be should be allowed to the defendant.

To allow damages on the second branch of this counter-claim you must find that false representations were made, and that they had the effect of persuading, and did persuade persons to drop their insurance in the defendant's company and take insurances in the Connecticut Mutual, and whatever was the value to the defendant, of insurances so lost to the defendant, may be allowed to the defendant as damages. The defendant, however, should be able to satisfy you that they so lost insurances and what was the value of the insurances so lost by them. They should be able specifically to show you that the persons would have continued their insurances in the defendant's company, had it not been for these representations made by the plaintiffs to them.

There is still another claim made, as I have told you, by the defendant in its answer, not called a counter-claim, but which

is, in fact, a counter-claim in its nature. This claim is for policies and notes in the hands of the plaintiffs not accounted for, a list of which you will find appended to the defendant's answer, and which the defendant asks that the plaintiffs in this case may be compelled to account for.

Under and by virtue of one of the articles of instructions, policies and notes sent by the defendant to plaintiffs were to be charged to plaintiffs and to be accounted for by them to the company. This provision of the articles of instructions gave defendant the right to charge to plaintiffs the policies and notes which were sent to them—that is, as I understand it, the first premiums on those policies and the amount of the notes. If the policies or notes, or any of them contained in this list, were sent to the plaintiffs, they would properly stand charged with them, and to relieve themselves from the charge, the plaintiffs must show that they have accounted for those policies and those notes, either by returning them to the defendant unpaid (the notes unpaid, of course), before or at this trial, or in some other manner, or show, so far as the policies are concerned, that they never were delivered and never took effect as contracts of insurance. Unless they so account for them, the jury should charge the plaintiffs with them. You will ascertain, then, what is due from the plaintiffs on these claims, asserted by the defendant against the plaintiffs in its answer, computing the proper interest, on whatever you shall find to be due, to the first day of the present term of this court. Should you find in favor of the plaintiffs in their claim (and in consequence of a part of the claim of the defendant not being denied by the reply, you must necessarily find in favor of the defendants on some of these counter-claims), you will strike a balance between the claims of the parties, and return a verdict in favor of the party in whose favor you find the balance to be, for the amount of that balance. If, however, you should find nothing due the plaintiffs upon their claim, you will nevertheless return a verdict in favor of the defendant for the amount of its claim, as you shall find it to be against the plaintiffs.

The jury returned a verdict in behalf of the insurance company, and against the plaintiffs, for $1,958 23.

The foregoing case, we believe, is almost of first impression. A similar state of facts existed in *Ensworth* v. *N. Y. Ins. Co.*, 7 Am. Law Reg., N. S., 332, and *Machette* v. *New England Mutual Ins. Co.*, Phil'a Legal Intelligencer, May 3, 1867 (referred to in note 7 Am. Law Reg., N. S., 335), but the points of law discussed were different. J. T. M.

Supreme Court of Pennsylvania.

DENSMORE OIL CO. *v.* DENSMORE ET AL.

The owners of any property may form an association or partnership with others, and may sell their property to the company at any price agreed on, provided there be no fraudulent representations made by them, and no such confidential relation arises, as to make them liable to account for any profit realized on such sale.

But where persons have formed an association, or are dealing in contemplation of one, then they stand in a confidential relation to each other and to all who may subsequently become members, and they cannot purchase any property and sell it to the company at an advance without a full disclosure of all the facts. If they do so the company may compel them to account for the profit.

An oil company was formed upon property belonging to some of the defendants: the valuation of the property was represented by stock to a certain amount, and part of this stock was given by the defendants who had owned the land to the other defendants who became the active parties in getting up the company. Held (no misrepresentation being proved), that neither class of the defendants were liable to other subscribers to the stock of the company.

APPEAL from the Court of Nisi Prius. In Equity.

The opinion of the court was delivered by

SHARSWOOD, J.—There are two principles applicable to all partnerships or associations for a common purpose of trade or business, which appear to be well settled on reason and authority.

The first is, that any man or number of men, who are the owners of any kind of property, real or personal, may form a partnership or association with others, and sell that property to the association at any price which may be agreed upon between them, no matter what it may have originally cost, provided there be no fraudulent misrepresentation made by the vendors to their associates. They are not bound to disclose the profit which they may realize by the transaction. They are in no